

1 Luke Busby, Esq.  
2 Nevada Bar No. 10319  
3 316 California Ave. #82  
4 Reno, Nevada 89509  
(775) 453-0112  
(775) 403-2192 (Fax)  
luke@lukeandrewbusbyltd.comMotio

5  
6 Attorney for the Plaintiff  
7 HERMAN MENEZES, LLC  
8  
9

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 \* \* \*

13 IN RE:

14 Case No. 3:22-bk-50266

15 ALVIN A. BRESCIANI,

16 Adv. Case No: 22-05012-hib

17 Debtor.

18 Chapter 7

19 HERMAN MENEZES, LLC

20 Hearing Date: June 21, 2023

21 Plaintiff,

22 Hearing Time: 9:30 AM

23 Vs.

24 **REPLY TO RESPONSE TO**  
**SECOND MOTION FOR**  
**DEFAULT JUDGMENT**  
**UNDER FED. R. BANKR. P.**  
**7055**

25 ALVIN BRESCIANI,

26 Defendant.

27 **TO THE COURT AND ALL PARTIES IN INTEREST:**

1 COMES NOW, HERMAN MENEZES, LLC, by and through the undersigned  
2 counsel, and hereby files the following Reply to the June 7, 2023 Response to  
3 Plaintiff's Second Motion for Default Judgment against Defendant ALVIN  
4 BRESCIANI, under Fed. R. Bankr. P. 7055.

5 This Reply is made and based upon all the pleadings and records on file for  
6 this proceeding together with every exhibit that is mentioned herein or attached  
7 hereto (each of which is incorporated by this reference as though it were set forth  
8 herein haec verba), if any there be, as well as the points and authorities set forth  
9 directly hereinafter.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 The procedural history of this case makes plain that Defendant has failed to  
12 plead or otherwise defend this case. The Clerk of the Court has entered two  
13 defaults against the Defendant (ECF #12 and ECF #33).

14 After the Court set aside Defendant's first default, the Court issued an  
15 Order Setting Aside Default (ECF #30) in which the Court directed Defendant to  
16 file an answer to the Amended Complaint by Monday, March 13, 2023. Before  
17 issuing this Order, at the February 9, 2023 hearing on Plaintiff's first Motion for  
18 Default Judgment, the Court expressly admonished Defendant that the Court  
19 would enter default judgment if he failed to respond to the Amended Complaint.  
20 Yet again, the Defendant did not do so. In fact, Defendant has not to date filed an  
21 answer, despite the Court's clear order. Nor has Defendant filed a motion to set  
22 aside the second default entered by the Clerk of the Court.  
23

24 Instead, Defendant has filed a response to Plaintiff's Second Motion for  
25 entry of Default Judgment in which Defendant argues an issue related to claim  
26 preclusion. Defendant's "response" is nothing of the sort, as it does not explain  
27 or attempt to explain why Defendant, for many months, failed to plead or  
28 otherwise respond to Plaintiff's Amended Complaint as required by the rules as

1 well as an express order from the Court, despite two defaults. Further, the claim  
2 preclusion argument presented by Defendant is meritless and gets the issue  
3 related to claim preclusion completely backward.

4 The order from the case attached to Defendants Response, *Stratford v.*  
5 *Fontanez*, Case No. 20-13764 from the Northern District of Ohio involved a  
6 **creditor's** motion for judgment on the pleadings under FRCP 12(c). The creditor  
7 contended that she was entitled to a determination of nondischargeability based  
8 on the issue-preclusive effect of a default judgment entered **against the debtor**  
9 in state court. The Court determined that because the state court judgment did  
10 not address the merits of the claims at issue, it could not enter judgment on the  
11 pleadings in favor of the creditor on that basis.

12 The *Stratford v. Fontanez* case in no way stands for the proposition that a  
13 debtor may seek to dismiss a creditor's adversary proceeding because an  
14 underlying state court judgment sought to be given preclusive effect. This  
15 interpretation sought by the defendants is an absurd result because it would  
16 allow any debtor to seek discharge of a fraudulent debt by simply not responding  
17 to pleadings in state court.

18 Further, the underlying Motion by the Plaintiff seeks judgment by default  
19 because the defendant simply failed to respond - issue preclusion is not raised.  
20 Because Plaintiff has never requested the court grant the underlying state court  
21 judgment preclusive effect, Defendant's discussion of issue preclusion standards  
22 in Nevada in *In Re Sandoval*, 126 Nev. 136, 139 (2010) is entirely irrelevant to  
23 Plaintiff's Second Motion for Default Judgment.

24 WHEREFORE, PLAINTIFF HEREBY MOVES: in accordance with Fed. R.  
25 Civ. P. 55(b)(2); Fed. R. Bankr. P. 7055. for default judgment against the  
26 Defendant and an order declaring that the \$330,570.65 in damages plus  
27  
28

1 prejudgment and post-judgment interest in the amount of 6.75% owed to  
2 HERMAN MENEZES, LLC is non-dischargeable under the provisions of 11  
3 U.S.C. § 523.

4

5 **DATED** this Jun 13, 2023

6 By: /s/ *Luke Busby, Esq.*

7 LUKE A. BUSBY, ESQ.  
8 SBN 10319  
9 316 California Ave.  
10 Reno, NV 89509  
11 775-453-0112  
12 luke@lukeandrewbusbyltd.com  
13 *Attorney for the Plaintiff*

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2                   **CERTIFICATE OF SERVICE**  
3

4                   I certify that on the date shown below, I caused service to be completed of a  
5                   true and correct copy of the foregoing **REPLY TO RESPONSE TO SECOND**  
6                   **MOTION FOR DEFAULT JUDGMENT UNDER FED. R. BANKR. P. 7055** by:

7                   \_\_\_\_\_ personally delivering;  
8                   \_\_\_\_\_ delivery via Reno/Carson Messenger Service;  
9                   \_\_\_\_\_ sending via Federal Express (or other overnight delivery service);  
10                  \_\_\_\_\_ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto;  
11                  or,  
12                   delivery via electronic means (fax, eflex, NEF, etc.) to:  
13

14                  Cliff J. Young Esq.  
15                  Bar No. 1233  
16                  650 So Rock Blvd Ste 21a  
17                  Reno NV 89502  
18                  (775)677-777  
19                  cliffyounglaw@yahoo.com  
20                  *Attorney for Alvin A. Bresciani*

21                  By: /s/ Luke Busby, Esq.

22                  Jun 13, 2023

23                  LUKE A. BUSBY, ESQ.  
24                  SBN 10319  
25                  316 California Ave.  
26                  Reno, NV 89509  
27                  775-453-0112  
28                  luke@lukeandrewbusbyltd.com  
29                  *Attorney for the Plaintiff*